

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 32 of 1991

Hon'ble MR.JUSTICE D.H.WAGHELA

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME-TAX

Versus

KAPILAGURI S PATEL

Appearance:

MR MANISH R BHATT for Petitioner No. 1

MR MANISH J. SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This Reference under section 256(2) of the Income-tax Act, 1961 (the Act), is at the instance of the Revenue and the following three questions have been referred by the Income-tax Appellate Tribunal, Ahmedabad Bench "A" for our opinion:

- "1. Whether, in law and on facts, the Appellate Tribunal was justified in entertaining miscellaneous application filed by the assessee and allowing the same by quashing the order of the Commissioner (Appeals) by holding that the transaction did not result in taxable capital gains?
2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that there was no capital gains in the transaction in question?
3. Whether, when the Tribunal held under order dtd: 27-11-1986 that there was no genuine conversion of the shares and debentures into stock in trade before transferring the same into partnership firm, the Tribunal was right in law in entertaining the claim of the assessee that the transfer did not result into taxable capital gains?"

The Assessment year is 1982-83 and the corresponding period is Samvat year 2037.

2. It is common ground between the parties that the facts and circumstances are identical to those obtaining in Income-tax Reference No.27/1991 in the case of The Commissioner of Income-tax Vs. Shri Subodhchandra Shantilal Patel, and hence it is not necessary to set out the facts in controversy in detail.

3. Hence, for the reasons stated in our decision rendered today in the case of The Commissioner of Income-tax Vs. Shri Subodhchandra Shantilal Patel, in ITR 27 of 1991, the three questions referred to us are answered as follows:

Question No.1 in the affirmative i.e. in favour of the assessee and against the revenue, question no.2 in the affirmative i.e. in favour of the assessee and against the revenue, and question no.3 in the affirmative i.e. in favour of the

assessee and against the revenue.

4. The reference stands disposed of accordingly.
There shall be no order as to costs.

[D.H. WAGHELA J.]

[D.A. MEHTA J.]

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